

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.458 OF 2005

M/s.Bajaj Electricals Limited ..Petitioner.

Vs.

V. Subramaniam & anr. ..Respondents.

....

Mr.C.U.Singh with Mr.P.M.Palshikar for the
Petitioner.

Mr.S.C.Naidu for Respondent No.1.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

1st March, 2005.

P.C. :

1. Rule, by consent made returnable forthwith.
Counsel appearing on behalf of Respondent No.1
waives service. By consent, and at the request of
counsel taken up for hearing and final disposal.

2. The Petitioner suspended the First Respondent

on 9th March, 2000 pending an enquiry into alleged acts of misconduct. During the pendency of the enquiry the First Respondent was paid subsistence allowance at the rate of 50% of the last drawn wages for the first 90 days, 75% for the next 90 days and at the rate of 100% for the rest of the period. The First Respondent instituted a complaint under Section 33-A of the Industrial Disputes Act, 1947 before the National Industrial Tribunal contending that he was entitled to receive annual increments on the basic wages as well as Variable Dearness Compensatory allowance which had not been taken into consideration by the Petitioner in making its calculations of subsistence allowance. On these grounds, it was submitted that the Petitioner had during the pendency of a reference to adjudication changed the service conditions of the First Respondent which was redressable in a complaint under Section 33-A. The Petitioner filed its written statement contending that the First Respondent was not a "concerned workman" during the pendency of the reference since he had already accepted the benefits of two settlements signed with the Mumbai General

Employees Association in 1996 and 2000. Further more it was also submitted that while determining the quantum of subsistence allowance the Petitioner had taken into account the last drawn wages paid before suspension and non-payment of annual increments and Dearness Compensatory allowance during the period of suspension did not amount to an illegal change within the meaning of Section 33 of the Industrial Disputes Act, 1947.

3. The Presiding Officer of the National Industrial Tribunal by his award dated 8th September, 2004 came to the conclusion that he had jurisdiction to entertain the complaint under Section 33-A. On merits, the Tribunal held that the First Respondent was entitled to the payment of annual increments and Dearness Allowance in computing his subsistence allowance. The Tribunal was of the view that Section 10-A(3) of the Industrial Employment (Standing Orders) Act, 1946 saved provisions under any other law in regard to the payment of subsistence allowance which were more beneficial and that the provisions contained in Standing Order 23 of the Bombay Industrial

Employment (Standing Orders) Rules, 1959 in their application to clerical and supervisory staff was one such provision under any other law for the time being in force.

4. The award of the Tribunal has been questioned both on the maintainability of the complaint under Section 33-A as well as on the merits of the determination made by the Tribunal. In so far as the maintainability of the complaint is concerned, it was submitted that the First Respondent was a member of the Mumbai Labour union which had arrived at two settlements in 1996 and 2000. In the reference that was made to adjudication, on the demands of the All India Bajaj Electricals Federation an award was made by the Tribunal. However, the award was challenged before this Court in Writ Petition 1368 of 2004 which ended in a settlement that was arrived at between the parties on 14th December, 2004. As a result of the settlement, the employees situated at Mumbai, Pune and Wardha were excluded from the terms of the settlement. Hence, it was submitted that the First Respondent had no connection to the reference which

was pending before the Industrial Tribunal and that the conditions precedent for the invocation of the jurisdiction under Section 33-A read with Section 33 of the Act do not exist. In so far as the merits are concerned, it was urged that the workman was entitled to the benefit of subsistence allowance under Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 which has been granted by the employer. In view of the judgment of the Supreme Court in B.D. Shetty v. CEAT Ltd. (2002 1 CLR 69) the provisions of the Model Standing Orders cannot be construed as provisions of "any other law for the time being in force", since the aforesaid expression in sub section (3) of Section 10-A cannot comprehend the standing orders which are made under the Act of 1946 and not under any other independent provision of law.

5. On the other hand, it is submitted on behalf of the First Respondent that the reference to adjudication which was made before the National Industrial Tribunal on 8th May, 1997 covered various demands of the All India Bajaj Electricals

Employees Federation and even according to the Petitioner the First Respondent as a member of the union was affiliated to the Federation. Hence, it was submitted that the First Respondent was clearly a workman concerned in the dispute within the meaning of Section 33(1)(a) of the Industrial Disputes Act, 1947 and that the complaint under Section 33-A was maintainable. In so far as the merits are concerned, it was submitted that the First Respondent was placed on suspension on 9th March, 2000 and that the enquiry officer submitted his report on 21st March, 2002. Hence, it was submitted that the enquiry must be deemed to have been concluded on the aforesaid date after which, the payment of subsistence allowance would cease to operate with reference to Section 10-A of the Industrial Employment (Standing Orders) Act, 1946. Thereafter, it was urged, the workman would be entitled to the benefit of subsistence allowance under the Standing Orders.

6. For the purposes of these proceedings, it would be convenient to proceed on the assumption that the complaint which was instituted by the First

Respondent under Section 33-A of the Industrial Disputes Act, 1947 was maintainable. This is because I am of the view that even on the aforesaid foundation the First Respondent had absolutely no case on merits and that consequently the award of the Industrial Tribunal is liable to be quashed and set aside.

7. Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 provides thus :

"10-A Payment of subsistence allowance (1)
Where any workman is suspended by the employer pending investigation or inquiry into complaints or charges of misconduct against him, the employer shall pay to such workman subsistence allowance -

(a) at the rate of fifty per cent of wages which the workman was entitled to immediately preceding the date of such suspension, for the first ninety days of suspension; and

(b) at the rate of seventy five per cent of

such wages for the remaining period of suspension if the delay in the completion of disciplinary proceedings, against such workman is not directly attributable to the conduct of such workman.

(2) If any dispute arises regarding the subsistence allowance payable to a workman under sub-section (1), the workman or the employer concerned may refer the dispute to the Labour Court, constituted under the Industrial Disputes Act, 1947, within the local limits of whose jurisdiction the industrial establishment wherein such workman is employed is situate and the Labour Court to which the dispute is so referred shall, after giving the parties an opportunity of being heard, decide the dispute and such decision shall be final and binding on the parties.

(3) Notwithstanding anything contained in the foregoing provisions of this section, where provisions relating to payment of subsistence allowance under any other law for the time

being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State."

8. These provisions were interpreted by a Division Bench of this Court in May & Baker Ltd. v. Kishore Jaikishandas Icchaporla (1991 II CLR 176). This Court held while construing Section 10-A(3) that while the aforesaid provision saves those provisions in relation to the payment of subsistence allowance under any other law for the time being in force which are more beneficial than Section 10-A, the expression "other law" would not refer to the model standing orders or the certified standing orders since they are laws made under the provisions of parent act itself and not under any other law. The Model Standing Orders and Certified Standing Orders, held the Division Bench, "are laws no doubt but they are laws made under the provisions of the Act". They were held not to be provisions under any other law. Hence, Section

10-A would "supervene in relation to the payment of subsistence allowance over the provisions of the Model Standing Orders".

9. This interpretation of Section 10-A by the Division Bench in May and Baker was accepted by the Supreme Court in B.D.Shetty's case (supra) with the following observations :

"It is plain from the very language of Section 10-A(3) that the words 'provisions of such other law' necessarily refer to the law other than one covered by the very Act and Rules made thereunder."

10. The Tribunal in the present case held that sub section (3) of Section 10-A would save sub-rule 5A of Rule 23 of the Bombay Industrial Employment (Standing Orders) Rules 1959 which was more beneficial to the workman because it gave to the workman the benefit of basic wages, Dearness Allowance and other compensatory allowances in computing the subsistence allowance. This view of

the Tribunal is ex-facie contrary to the law laid down by the Division Bench of this Court in May & Baker Ltd (supra) which has now been affirmed by the Supreme Court in B.D.Shetty as having laid down the correct position in law.

11. Counsel appearing on behalf of the First Respondent, however, submitted that Section 10-A(1) postulates the payment of subsistence allowance during the pendency of an enquiry and it was faintly urged that the enquiry must be deemed to have been completed on the submission of the report on 21st March, 2002. This submission cannot be accepted. The enquiry for the purposes of Section 10-A(1) cannot be regarded as being concluded on the submission of the enquiry report. The enquiry officer is a delegate of the disciplinary authority for the purpose of holding and concluding the disciplinary enquiry. Upon the submission of the report the disciplinary authority has to take due steps in accordance with law.

12. In the circumstances, the view of the Tribunal on merits is unsustainable. In view of the

aforesaid conclusion, I have not considered it necessary to decide upon the question as to whether the complaint that was filed by the First Respondent was maintainable because even on the foundation that it was, I am of the view that the finding of the Tribunal on merits calls for interference under Article 226.

13. The Petition is accordingly allowed. The impugned award of the Tribunal dated 8th September, 2004 is quashed and set aside. The Petitioner shall take expeditious steps to conclude the disciplinary proceedings in any event within a period of three months from today.

There shall be no order as to costs.